

108TH CONGRESS  
1ST SESSION

# S. 1611

To provide for the establishment of a commission to conduct a study concerning the overtime regulations of the Department of Labor.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2003

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide for the establishment of a commission to conduct a study concerning the overtime regulations of the Department of Labor.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. COMMISSION ON OVERTIME REGULATIONS.**

4       (a) ESTABLISHMENT OF COMMISSION.—There is es-  
5       tablished the Commission on Overtime Regulations (in  
6       this section referred to as the “Commission”).

7       (b) MEMBERSHIP.—

8               (1) COMPOSITION.—The Commission shall be  
9       composed of 11 members of whom—

1 (A) 1 member shall be appointed by the  
2 Secretary of Labor from the general public;

3 (B) 1 member shall be a representative of  
4 business to be nominated by the United States  
5 Chamber of Commerce and appointed by the  
6 Secretary of Labor;

7 (C) 1 member shall be a representative of  
8 organized labor to be nominated by the AFL–  
9 CIO and appointed by the Secretary of Labor;

10 (D) 1 member shall be appointed by the  
11 chairman of the Committee on Health, Edu-  
12 cation, Labor, and Pensions of the Senate;

13 (E) 1 member shall be appointed by the  
14 ranking minority member of the Committee on  
15 Health, Education, Labor, and Pensions of the  
16 Senate;

17 (F) 1 member shall be appointed by the  
18 chairman of the Committee on Appropriations  
19 of the Senate;

20 (G) 1 member shall be appointed by the  
21 ranking minority member of the Committee on  
22 Appropriations of the Senate;

23 (H) 1 member shall be appointed by the  
24 chairman of the Committee on Education and  
25 the Workforce of the House of Representatives;

1 (I) 1 member shall be appointed by the  
 2 ranking minority member of the Committee on  
 3 Education and the Workforce of the House of  
 4 Representatives;

5 (J) 1 member shall be appointed by the  
 6 chairman of the Committee on Appropriations  
 7 of the House of Representatives; and

8 (K) 1 member shall be appointed by the  
 9 ranking minority member of the Committee on  
 10 Appropriations of the House of Representatives.

11 (2) PERIOD OF APPOINTMENT; VACANCIES.—  
 12 Members shall be appointed for the life of the Com-  
 13 mission. Any vacancy in the Commission shall not  
 14 affect its powers, and shall be filled in the same  
 15 manner as the original appointment.

16 (3) QUORUM.—A majority of the members of  
 17 the Commission shall constitute a quorum, but a  
 18 lesser number of members may hold hearings.

19 (4) CHAIRPERSON AND VICE CHAIRPERSON.—  
 20 The Commission shall select a Chairperson and Vice  
 21 Chairperson from among its members.

22 (c) DUTIES OF THE COMMISSION.—

23 (1) STUDY.—The Commission shall conduct a  
 24 thorough study of, and develop recommendations on,  
 25 issues relating to the modernization of the overtime

1 provisions of the Fair Labor Standards Act of 1938  
2 (29 U.S.C. 201 et seq.) in order to promote clarity  
3 and compliance. In conducting such study the Com-  
4 mission shall—

5 (A) review the categories and number of  
6 workers not eligible for overtime pay under cur-  
7 rent regulations under the Fair Labor Stand-  
8 ards Act of 1938 and identify how many work-  
9 ers and employers might be affected by pro-  
10 posed changes to such regulations;

11 (B) determine if the proposed regulation  
12 relating to overtime is sufficiently clear to be  
13 easily understood by employers and workers;

14 (C) assess the paperwork burden that em-  
15 ployers would have in order to assure that each  
16 individual worker, claimed to be exempt from  
17 such overtime requirements, actually is exempt  
18 under such regulation;

19 (D) assess the extent to which it will be  
20 clear to the individual worker as to his or her  
21 overtime pay protection under the proposed reg-  
22 ulation;

23 (E) determine the impact of the proposed  
24 regulation on the access of individuals to health  
25 care based upon the impact the proposed regu-

1           lation has on nurses and pharmacists, and the  
2           impact that such regulation has on fundamental  
3           security occupations of first responders such as  
4           police, firefighters, and paramedics;

5           (F) identify how the proposed regulation  
6           would affect enforcement and compliance ac-  
7           tions of the Department of Labor;

8           (G) make recommendation to simplify the  
9           definitions of professional or managerial duties  
10          that exempt workers from overtime require-  
11          ments so that they have a greater ability to  
12          know in advance what their expectations should  
13          be;

14          (H) identify new and emerging specialty  
15          positions in the modern workplace that require  
16          clarification of their status with respect to the  
17          professional employees exemption to the over-  
18          time requirements;

19          (I) review the need to update the exemp-  
20          tion to the overtime requirements for computer  
21          workers;

22          (J) examine the merits of an income ceil-  
23          ing above which workers would be exempt from  
24          the overtime requirements;

1 (K) review the salary levels used to trigger  
2 the regulatory tests for overtime compliance, in-  
3 cluding the merits and drawbacks of indexing  
4 such levels for inflation;

5 (L) consider what kind of limited or condi-  
6 tional “docking” flexibility would provide em-  
7 ployers with alternatives to termination and to  
8 week-long suspensions without being used as a  
9 subterfuge to evade or undermine the salary  
10 test with respect to overtime requirements;

11 (M) identify obstacles small businesses  
12 may face in achieving compliance or correction  
13 with respect to the overtime requirements and  
14 develop a means to overcome those obstacles;

15 (N) clarify the definition of “workplace  
16 conduct” so that employers and employees  
17 know whether dangerous or abusive situations,  
18 such as harassment or violence off the employ-  
19 er’s premises can, nevertheless, be addressed in  
20 a manner consistent with the Fair Labor  
21 Standards Act of 1938;

22 (O) identify ways in which employers can  
23 satisfy the requirement that policies regarding  
24 workplace conduct be in writing to permit the  
25 use of other forms of notice or other tech-

1 nologies for communications while ensuring that  
2 notice is fairly provided to workers;

3 (P) identify ways to improve the avail-  
4 ability of the proposed safe harbor means of  
5 demonstrating compliance with the overtime  
6 regulations by clarifying that such regulations  
7 are intended to parallel existing legal require-  
8 ments for discrimination or labor law cases and  
9 not to prompt new litigation or confusion; and

10 (Q) study other issues determined appro-  
11 priate by the Commission.

12 (2) REPORT.—Not later than July 30, 2004,  
13 the Commission shall prepare and submit to the Sec-  
14 retary of Labor, the appropriate committees of Con-  
15 gress, and the general public a report concerning the  
16 study conducted under paragraph (1). The report  
17 shall include the findings and recommendations of  
18 the Commission with respect to the matters de-  
19 scribed in subparagraphs (A) through (Q) of para-  
20 graph (1).

21 (3) EFFECTIVE DATE OF REVISED REGULA-  
22 TIONS.—The Secretary of Labor shall ensure that  
23 the effective date for any proposed modifications to  
24 the regulations relating to the overtime requirements  
25 under the Fair Labor Standards Act of 1938 is not

1 earlier than 60 days after the date on which the re-  
2 port is submitted under paragraph (2).

3 (d) POWERS OF THE COMMISSION.—

4 (1) HEARINGS.—The Commission may hold  
5 such hearings, sit and act at such times and places,  
6 take such testimony, and receive such evidence as  
7 the Commission considers advisable to carry out this  
8 section. The Commission shall, to the maximum ex-  
9 tent possible, use existing data and research prior to  
10 holding such hearings

11 (2) INFORMATION FROM FEDERAL AGENCIES.—

12 The Commission may secure directly from any Fed-  
13 eral department or agency such information as the  
14 Commission considers necessary to carry out this  
15 section. Upon request of the Chairperson of the  
16 Commission, the head of such department or agency  
17 shall furnish such information to the Commission.

18 (3) POSTAL SERVICES.—The Commission may  
19 use the United States mails in the same manner and  
20 under the same conditions as other departments and  
21 agencies of the Federal Government.

22 (e) COMMISSION PERSONNEL MATTERS.—

23 (1) COMPENSATION; TRAVEL EXPENSES.—Each  
24 member of the Commission shall serve without com-  
25 pensation but shall be allowed travel expenses, in-



1 including per diem in lieu of subsistence, at rates au-  
2 thorized for employees of agencies under subchapter  
3 I of chapter 57 of title 5, United States Code, while  
4 away from their homes or regular places of business  
5 in the performance of services for the Commission.

6 (2) STAFF AND EQUIPMENT.—The Department  
7 of Labor shall provide all financial, administrative,  
8 and staffing requirements for the Commission in-  
9 cluding—

10 (A) office space;

11 (B) furnishings; and

12 (C) equipment.

13 (f) TERMINATION OF THE COMMISSION.—The Com-  
14 mission shall terminate 90 days after the date on which  
15 the Commission submits its report under subsection  
16 (c)(2).

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